

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

PERRY DUNN §
Plaintiff, §
§
vs. § CIVIL ACTION NO. _____
§
THE KROGER COMPANY, and §
KROGER TEXAS L.P. § JURY REQUESTED
Defendant. §

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to the terms and provisions of 28 U.S.C. §§1441 and 1446, The Kroger Co. and Kroger Texas L.P., ("Kroger")¹ Defendants in the cause styled "Perry Dunn v. The Kroger Company and Kroger Texas L.P.," originally pending as Cause No. CV-13-1872 in the 397th Judicial District Court of Grayson County, Texas, file this Notice of Removal of the cause to the United States District Court for the Eastern District of Texas, Sherman Division.

I.
BASIS FOR REMOVAL

The basis of the removal of this action is diversity jurisdiction under 28 U.S.C. §1332. In particular, diversity jurisdiction exists in this case because there is complete diversity of citizenship between the parties. Defendants are not citizens of the State of Texas, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. See 28 U.S.C. §1332.

¹ Real party in interest is Kroger Texas L.P.

II.
DIVERSITY JURISDICTION

At the time of the accident giving rise to this case, Plaintiff Perry Dunn was a resident and citizen of the State of Oklahoma.

The Kroger Co., at the time of the initial filing of this action and at the time of the removal of this action, was and is a corporation formed under the laws of Ohio with its principal place of business in Ohio. The Kroger Co. has never been a resident of, incorporated in, or had its principal place of business in the State of Texas.

Kroger Texas L.P., at the time of the initial filing of this action and at the time of the removal of this action, was and is a limited partnership formed under the laws of Ohio. The general partner of Kroger Texas L.P. is KRGP Inc., an Ohio corporation with its principal place of business in Ohio. The only limited partner is KRLP Inc., an Ohio corporation with its principle place of business in Ohio. Neither KPGP Inc. nor KRLP Inc., the only two partners of Kroger Texas L.P., has ever been a resident of, incorporated in, or had its principal place of business in the State of Texas.

III.
FACTUAL BACKGROUND

Plaintiff claims he was injured when he attempted to shift a malfunctioning dock plate mechanism and he felt a “pop” in his lower back. Plaintiff claims his supervisor denied him assistance in moving the dock plate mechanism. Plaintiff filed suit against The Kroger Co. on October 16, 2013, in the 397th Judicial District Court of Grayson County, Texas. Plaintiff filed his Amended Petition against The Kroger Co. and Kroger Texas L.P. on November 20, 2013 and alleges negligence and premises liability causes of action against Kroger.

THE AMOUNT IN CONTROVERSY

Plaintiff judicially admits in his First Amended Petition that he is seeking monetary relief over \$1,000,000.² Specifically, Plaintiff claims damages for past and future medical expenses, past and future physical pain and suffering and mental anguish; loss of earning capacity, plus costs of court, pre and post judgment interest, and such other relief that might be granted.³ As a result, the amount in controversy in this case exceeds \$75,000.00, exclusive of interest and costs, and this case is removable.⁴

V. REMOVAL IS TIMELY

This removal is timely because it is filed “within thirty days after receipt, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has just become removable.” 28 U.S.C. §1446(b). Kroger first became aware this case might be removable on November 20, 2013 when Kroger received Plaintiff’s First Amended Petition. Accordingly, this removal is timely because it is made within thirty days after the receipt by Defendants of the document which first demonstrated the case was removable. Moreover, more than one year has not passed since the commencement of the action in state court on October 16, 2013. 28 U.S.C. §1446(b).

² See Plaintiff’s First Amended Petition, attached hereto as pgs 16 – 22.

³ *Id.*

⁴ See *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996); see also *Laughlin v. Kmart Corp.*, 50 S.W.3d 871, 873 (10th Cir. 1995) (amount in controversy is ordinarily determined by allegations in complaint).

VI.
VENUE

Venue is proper in this district under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.

VII.
PROCEDURAL REQUIREMENTS

Defendants have filed a Notice of Filing Notice of Removal to Federal Court with the Clerk of the 397th Judicial District Court of Grayson County, Texas simultaneously with the filing of this Notice of Removal.

Pursuant to Local Rule CV-81, the following documents are attached hereto for the Court's reference:

- (1) Certified copy of the state court docket sheet as of December 17, 2013;
- (2) All pleadings that assert causes of action and all answers thereto;
- (3) A copy of all process and orders served upon Defendant;
- (4) Case Information, including:
 - (a) A list of all parties and current status of the removed case;
 - (b) A complete list of attorneys involved, including bar numbers, addresses, telephone numbers, and party or parties represented by him/her;
 - (c) A record of which parties have requested trial by jury and
 - (d) The name and address of the court from which the case is being removed; and
- (5) Civil Cover Sheet.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that this case be removed to the United States District Court for the Eastern District of Texas, Sherman Division.

Respectfully submitted,



Donna C. Peavler
Attorney-in-charge
State Bar No. 00783887
dpeavler@peavlergroup.com

Julia L. Sinor
State Bar No. 24032540
THE PEAVLER GROUP, P.C.
3400 Carlisle Street, Suite 430
Dallas, Texas 75204
(214) 999-0550
(214) 999-0551 (fax)

ATTORNEYS FOR DEFENDANTS
THE KROGER CO. and
KROGER TEXAS L.P.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to the following counsel of record in accordance with and pursuant to the Federal Rules of Civil Procedure on December 19, 2013:

Norman J. Hoppenstein
Hoppenstein Law Firm
7920 Belt Line Rd. Ste 370
Dallas, Texas 75254



Donna C. Peavler